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Federal Communications Commission

DA 93-676

FCC MAIL SECTION

Federal Communications Commission
Washington, D.C. 20554

JUN 23 12 47 PM '93

MM Docket No. 93-169

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Walterboro and Ridgeville,
South Carolina)

RM-8246

NOTICE OF PROPOSED RULE MAKING

Adopted: June 7, 1993; Released: June 22, 1993

Comment Date: August 13, 1993

Reply Comment Date: August 30, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Gresham Communications, Inc. ("petitioner") requesting the reallocation of Channel 265C3 from Walterboro, South Carolina, to Ridgeville, South Carolina, and the modification of Station WPAL-FM's license to specify Ridgeville as its community of license. Petitioner states that it will apply for the channel, if reallocated to Ridgeville.

2. Ridgeville, population 1,625 persons, is an incorporated community in Dorchester County, population 83,060 persons.¹ Petitioner states that Ridgeville is governed by a town council, has its own police and fire departments, post office, businesses, churches and school. Ridgeville has no local aural transmission service while Walterboro receives local transmission service from FM Station WONO and AM Station WALD. Neither Ridgeville nor Walterboro is located in an Urbanized Area.

3. Petitioner contends that the public interest would be served by granting its petition. Station WPAL-FM currently operates with a directional antenna from a site east-south-east of Walterboro and is unable to provide Ridgeville with a 70 dBu signal. If Channel 265C3 is reallocated to Ridgeville, petitioner states that Station WPAL-FM will be able to relocate its transmitter, operate omnidirectionally, and provide the community with its first local aural transmission service.

4. We believe the public interest would be served by proposing the reallocation of Channel 265C3 from Walterboro to Ridgeville since it could provide the com-

munity with its first local FM transmission service without depriving Walterboro of its sole local transmission service. Channel 265C3 can be allotted to Ridgeville with a site restriction of 2.7 kilometers (1.7 miles) west to accommodate petitioner's desired transmitter site.² Petitioner does not seek to relocate its station from a rural to an urban community but rather to another rural community and the reallocation could enable Station WPAL-FM to operate omnidirectionally. However, because the petitioner seeks to relocate its transmitter, there will be areas which will lose an existing reception service as well as areas which will gain a new reception service. Therefore, in light of the Commission's expressed concern over the loss of an existing service,³ we request that the petitioner provide information showing the areas and populations which will receive a new service and the areas and populations which will lose an existing service if Channel 265C3 is reallocated to Ridgeville. In addition, the study should indicate the number of reception services which are now available within the gain and loss areas.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Channel No. Proposed
Ridgeville, South Carolina	--	265C3
Walterboro, South Carolina	229A, 265C	229A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **August 13, 1993**, and reply comments on or before **August 30, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William J. Pennington, III, Esq.
P.O. Box 2506
Pawleys Island, South Carolina 29585
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table

¹ Population figures are taken from the 1990 U.S. Census.

² The coordinates for Channel 265C3 at Ridgeville are North Latitude 33-06-00 and West Longitude 80-20-30.

³ "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from

reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." *Modification of FM and TV Authorizations to Specify a New Community of License (Memorandum Opinion and Order)*, 5 FCC Rcd 7094, 7097 (1990).

of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.